

SECOND REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 577**  
**90TH GENERAL ASSEMBLY**

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INTRODUCED BY SENATOR MAXWELL.

Offered March 28, 2000.

Senate Substitute adopted, April 4, 2000.

Taken up for Perfection April 4, 2000. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

2745S.04P

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**AN ACT**

To repeal sections 260.375, 260.380, 260.391, 260.395, 260.480, 260.535, 260.546 and 260.569, RSMo 1994, and sections 260.475, 260.479, 260.500 and 640.010, RSMo Supp. 1999, relating to the creation of a drycleaning solvent cleanup fund, and to enact in lieu thereof twenty-seven new sections relating to the same subject, with an expiration date.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 260.375, 260.380, 260.391, 260.395, 260.480, 260.535, 260.546 and 260.569, RSMo 1994, and sections 260.475, 260.479, 260.500 and 640.010, RSMo Supp. 1999, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 260.375, 260.380, 260.391, 260.395, 260.475, 260.479, 260.480, 260.500, 260.535, 260.546, 260.569, 260.900, 260.905, 260.910, 260.915, 260.920, 260.925, 260.930, 260.935, 260.940, 260.945, 260.950, 260.955, 260.960, 640.010, 640.020 and 1, to read as follows:

260.375. The department shall:

- (1) Exercise general supervision of the administration and enforcement of sections 260.350 to 260.430 and all standards, rules and regulations, orders or license and permit terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430;**
- (2) Develop and implement programs to achieve goals and objectives set by the state

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

hazardous waste management plan;

(3) Retain, employ, provide for and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 260.350 to 260.430 and prescribe the times at which they shall be appointed and their powers and duties;

(4) Budget and receive duly appropriated moneys for expenditures to carry out the provisions of sections 260.350 to 260.430;

(5) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 260.350 to 260.430. Funds received by the department pursuant to this section shall be deposited with the state treasurer and held and disbursed by him **or her** in accordance with the appropriations of the general assembly;

(6) Provide the commission all necessary support the commission may require to carry out its powers and duties including, but not limited to: keeping of records of all meetings; notification, at the direction of the chairman of the commission, of the members of the commission of the time, place and purpose of each meeting by written notice; drafting, for consideration of the commission, a state hazardous waste management plan and standards, rules and regulations necessary to carry out the purposes of sections 260.350 to 260.430; and investigation of petitions for variances and complaints made to the commission and submission of recommendations thereto;

(7) Collect and maintain, and require any person to collect and maintain, such records and information of hazardous waste generation, storage, transportation, resource recovery, treatment and disposal in this state, including quantities and types imported and exported across the borders of this state and install, calibrate and maintain and require any person to install, calibrate and maintain such monitoring equipment or methods, and make reports consistent with the purposes of sections 260.350 to 260.430;

(8) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(9) Develop facts and make inspections and investigations, including gathering of samples and performing of tests and analyses, consistent with the purposes of sections 260.350 to 260.430, and in connection therewith, to enter or authorize any representative of the department to enter, at all reasonable times, in or upon any private or public property for any purpose required by sections 260.350 to 260.430 or any federal hazardous waste management act. Such entry may be for the purpose, without limitation, of developing or implementing standards, rules and regulations, orders or license or permit terms and conditions, of inspecting or investigating any records required to be kept by sections 260.350 to 260.430 or any license or permit issued **[hereunder] pursuant to sections 260.350 to 260.430** or any hazardous waste management practice which the department or commission believes violates sections 260.350 to 260.430, or any standard, rule or

regulation, order or license or permit term or condition adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**, or otherwise endangers the health of humans or the environment, or the site of any suspected violation of sections 260.350 to 260.430, or any standard, rule or regulation, order, or license or permit term or condition adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access requested for the purpose of inspection [under this provision] **pursuant to this subdivision** to an authorized representative of the department or commission who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to make such inspection;

(10) Require each hazardous waste generator located within this state and each hazardous waste generator located outside of this state before utilizing any hazardous waste facility in this state to file a registration report containing such information as the commission by regulation may specify relating to types and quantities of hazardous waste generated and methods of hazardous waste management, and to meet all other requirements placed upon hazardous waste generators by sections 260.350 to 260.430 and the standards, rules and regulations and orders adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**;

(11) Require each hazardous waste transporter operating in this state to obtain a license and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and license terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**;

(12) Require each hazardous waste facility owner and operator to obtain a permit for each such facility and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and permit terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**;

(13) Issue, continue in effect, revoke, modify or deny in accordance with the standards, rules and regulations, hazardous waste transporter licenses and hazardous waste facility permits;

(14) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 260.350 to 260.430;

(15) Enter such order or determination as may be necessary to effectuate the provisions of sections 260.350 to 260.430 and the standards, rules and regulations, and license and permit terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**;

(16) Enter such order or cause to be instituted in a court of competent jurisdiction such legal proceedings as may be necessary in a situation of imminent hazard, as prescribed in section 260.420;

(17) Settle or compromise as it may deem advantageous to the state, with the approval of the commission, any suit undertaken by the commission for recovery of any penalty or for compelling compliance with any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license or permit term or condition adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430;**

(18) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 260.350 to 260.430 and, upon request, consult with persons subject to sections 260.350 to 260.430 on the proper measures necessary to comply with the requirements of sections 260.350 to 260.430 and rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430;**

(19) Encourage, coordinate, participate in or conduct studies, investigations, research and demonstrations relating to hazardous waste management as it may deem advisable and necessary for the discharge of its duties [under] **pursuant to** sections 260.350 to 260.430;

(20) Represent the state of Missouri in all matters pertaining to interstate hazardous waste management including the negotiation of interstate compacts or agreements;

(21) Arrange for the establishment, staffing, operation and maintenance of collection stations, within appropriations or other funding available therefor, for householders, farmers and other exempted persons as provided [under] **in** section 260.380;

(22) Collect and disseminate information relating to hazardous waste management;

(23) Conduct education and training programs on hazardous waste problems and management;

(24) Encourage and facilitate public participation in the development, revision and implementation of the state hazardous waste program;

(25) Encourage waste reduction, resource recovery, exchange and energy conservation in hazardous waste management;

(26) Exercise all powers necessary to carry out the provisions of sections 260.350 to 260.430, assure that the state of Missouri complies with any federal hazardous waste management act and retains maximum control thereunder, and receives all desired federal grants, aid and other benefits;

(27) Present to the public, at a public meeting, and to the governor and the members of the general assembly, an annual report on the status of the state hazardous waste program;

(28) Develop comprehensive plans and programs to aid in the establishment of hazardous waste disposal sites as needed within the various geographical areas of the state within a reasonable period of time;

(29) Control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment and, in aid thereof, may cause to be filed by the attorney general or a prosecuting attorney, a suit

seeking mandatory or prohibitory injunctive relief or such other relief as may be appropriate. The department shall also take such action as is necessary to recover all costs associated with the cleanup of any hazardous waste from the person responsible for the waste. All money received shall be deposited in the hazardous waste fund[.] **created in section 260.391;**

**(30) Oversee any corrective action work undertaken pursuant to sections 260.350 to 260.430 and rules promulgated pursuant to sections 260.350 to 260.430 to investigate, monitor, or clean up releases of hazardous waste or hazardous constituents to the environment at hazardous waste facilities. The department shall review the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, and attest to their accuracy and adequacy. Owners or operators of hazardous waste facilities performing corrective actions shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subdivision. All such funds remitted by owners or operators of hazardous waste facilities performing corrective actions shall be deposited in the hazardous waste fund created in section 260.391.**

260.380. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations, and the hazardous waste generator may provide such information in a single registration form for all hazardous waste generation sites owned or operated by the hazardous waste generator or may register each hazardous waste generation site separately for the purposes of subdivision (10) of this subsection. **Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration. Such fees shall be deposited in the hazardous waste fund created in section 260.391;**

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

(3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials and other potential hazards as specified by standards, rules and regulations;

(4) Provide safe storage and handling, including spill protection, as specified by standards, rules and regulations, for all hazardous wastes from the time of their generation to the time of their removal from the site of generation;

(5) Unless provided otherwise in the rules and regulations, utilize only a hazardous waste transporter holding a license **[under] pursuant to** sections 260.350 to 260.430 for the removal of all hazardous wastes from the premises where they were generated;

(6) Unless provided otherwise in the rules and regulations, provide a separate manifest to

the transporter for each load of hazardous waste transported from the premises where it was generated. The generator shall specify the destination of such load on the manifest. The manner in which the manifest shall be completed, signed and filed with the department shall be in accordance with rules and regulations;

(7) Utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate **[under] pursuant to** sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized **[under] pursuant to** the federal Resource Conservation and Recovery Act, or any facility exempted from the permit required **[under] pursuant to** section 260.395;

(8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted **[hereunder] pursuant to sections 260.350 to 260.430;**

(9) Make available to the department upon request samples of waste and all records relating to hazardous waste generation and management for inspection and copying and allow the department to make unhampered inspections at any reasonable time of hazardous waste generation and management facilities located on the generator's property and hazardous waste generation and management practices carried out on the generator's property;

(10) Pay annually, on or before January first of each year, effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund to be used solely for the administrative costs of the program. The fee shall not exceed one dollar per ton of hazardous waste registered with the department as specified in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. The amount of the fee shall be established annually by the commission by rule or regulation. However, the fee shall not exceed ten thousand dollars per generator per year and no fee shall be imposed upon any generator who registers less than ten tons of hazardous waste annually with the department;

(a) All moneys payable **[under] pursuant to** the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund **created in section 260.391;**

(b) The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the fees authorized by this subdivision. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste registered, the form and submission of reports to accompany the payment of fees, the time and manner of payment of fees, which shall not be more often than quarterly.

2. Exempted from the requirements of this section are individual householders and farmers who generate only small quantities of hazardous waste and any person the commission determines

generates only small quantities of hazardous waste on an infrequent basis, except that:

(1) Householders, farmers and exempted persons shall manage all hazardous wastes they may generate in a manner so as not to adversely affect the health of humans, or pose a threat to the environment, or create a public nuisance; and

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release or advertisement thereof, including instructions for handling and delivery, generators exempted **[under] pursuant to** this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

(a) Any storage, treatment or disposal site authorized to operate **[under] pursuant to** sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized **[under] pursuant to** the federal Resource Conservation and Recovery Act which the department designates for this purpose; or

(b) A collection station or vehicle which the department may arrange for and designate for this purpose.

260.391. 1. There is hereby created in the state treasury a fund to be known as the "Hazardous Waste Fund". All funds received from hazardous waste permit and license fees, generator fees, taxes collected by contract hazardous waste landfill operators, general revenue, federal funds, gifts, bequests, donations, or any other moneys so designated shall be paid to the director of revenue and deposited in the state treasury to the credit of the hazardous waste fund. The hazardous waste fund, subject to appropriation by the general assembly, shall be used by the department as provided by appropriations and consistent with rules and regulations established by the hazardous waste management commission for the purpose of carrying out the provisions of sections 260.350 to 260.430, **[relating to] for the management of hazardous waste, [for cleanup of] responses to hazardous [waste] substance emergencies as provided in sections 260.500 to 260.550, corrective actions at regulated facilities** and **[abandoned or]** illegal hazardous waste sites and for payments to other state agencies for such services consistent with sections 260.350 to 260.430, upon proper warrant issued by the commissioner of administration.

2. The unexpended balance in the hazardous waste fund at the end of each fiscal year shall not be transferred to the general revenue fund of the state treasurer, except as directed by the general assembly by appropriation, and shall be invested to generate income to the fund. The provisions of section 33.080, RSMo, relating to the transfer of funds to the general revenue fund of the state by the state treasurer shall not apply to the hazardous waste fund.

3. There is hereby created within the hazardous waste fund a subaccount known as the "Hazardous Waste Facility Inspection Subaccount". All funds received from hazardous waste facility inspection fees shall be paid to the director of revenue and deposited in the state treasury

to the credit of the hazardous waste facility inspection subaccount. Moneys from such subaccount shall be used by the department for conducting inspections at facilities that are permitted or are required to be permitted as hazardous waste facilities by the department.

260.395. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to transport any hazardous waste in this state without first obtaining a hazardous waste transporter license. Any person transporting hazardous waste in this state shall file an application for a license [under] **pursuant to** this subsection which shall:

(1) Be submitted on a form provided for this purpose by the department and shall furnish the department with such equipment identification and data as may be necessary to demonstrate to the satisfaction of the department that equipment engaged in such transportation of hazardous waste, and other equipment as designated in rules and regulations [hereunder] **pursuant to sections 260.350 to 260.430**, is adequate to provide protection of the health of humans and the environment and to comply with the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430**. If approved by the department, this demonstration of protection may be satisfied by providing certification that the equipment so identified meets and will be operated in accordance with the rules and regulations of the Missouri public service commission and the federal Department of Transportation for the transportation of the types of hazardous materials for which it will be used;

(2) Include, as specified by rules and regulations, demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or any combination thereof which shall be related to the number of units, types and sizes of equipment to be used in the transport of hazardous waste by the applicant;

(3) Include, as specified in rules and regulations, a fee payable to the state of Missouri which shall [be an amount to be determined by the number of vehicles and the gross weight of each vehicle to be covered by the license but shall not exceed one hundred dollars per vehicle to be covered by the license.] **consist of an annual application fee, plus an annual use fee based upon tonnage, mileage or a combination of tonnage and mileage. The fees established pursuant to this subdivision shall be set to generate, as nearly as is practicable, six hundred thousand dollars annually. No fee shall be collected pursuant to this subdivision from railroads that pay a fee pursuant to subsection 19 of this section. Fees collected pursuant to this subdivision shall be deposited in the hazardous waste fund created pursuant to section 260.391.**

2. If the department determines the application conforms to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430**, it shall issue the

hazardous waste transporter license with such terms and conditions as it deems necessary to protect the health of humans and the environment. The department shall act within ninety days after receipt of the application. If the department denies the license, it shall issue a report to the applicant stating the reason for denial of the license.

3. A license may be suspended or revoked whenever the department determines that the equipment is or has been operated in violation of any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license term or condition adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**, poses a threat to the health of humans or the environment, or is creating a public nuisance.

4. Whenever a license is issued, renewed, denied, suspended or revoked by the department, any aggrieved person, by petition filed with the department within thirty days of the decision, may appeal such decision and shall be entitled to a hearing as provided in section 260.400.

5. A license shall be issued for a period of one year and shall be renewed upon proper application by the holder and a determination by the department that the applicant is in compliance with all provisions of sections 260.350 to 260.430 and all standards, rules and regulations, orders and license terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**.

6. A license is not required for the transport of any hazardous waste on the premises where it is generated or onto contiguous property owned by the generator thereof, or for those persons exempted in section 260.380. Nothing in this subsection shall be interpreted to preclude the department from inspecting unlicensed hazardous waste transporting equipment and to require that it be adequate to provide protection for the health of humans and the environment.

7. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, it shall be unlawful for any person to construct, substantially alter or operate, including postclosure activities and operations specified in the rules and regulations, a hazardous waste facility without first obtaining a hazardous waste facility permit for such construction, alteration or operation from the department. Such person must submit to the department at least ninety days prior to submitting a permit application a letter of intent to construct, substantially alter or operate any hazardous waste disposal facility. The person must file an application within one hundred eighty days of the filing of a letter of intent unless granted an extension by the commission. The department shall publish such letter of intent as specified in section 493.050, RSMo, within ten days of receipt of such letter. The letter shall be published once each week for four weeks in the county where the hazardous waste disposal facility is proposed. Once such letter is submitted, all conditions for the permit application evaluation purposes in existence as of the date of submission shall be deemed frozen, in that no subsequent action by any person to change such conditions in an attempt to thwart a fair and impartial decision on the application for a permit shall be allowed as grounds for denial of the permit. Any

person before constructing, substantially altering or operating a hazardous waste facility in this state shall file an application for a permit which shall:

(1) Be submitted on a form provided for this purpose by the department and shall furnish the department with plans, specifications and such other data as may be necessary to demonstrate to the satisfaction of the department that such facility does or will provide adequate protection of the health of humans and the environment and does or will comply with the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430;**

(2) Include plans, designs, engineering reports and relevant data for construction, alteration or operation of a hazardous waste facility, to be submitted to the department by a registered professional engineer licensed by this state;

(3) Include, as specified by rules and regulations, demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, posting of bond or any combination thereof, which shall be related to type and size of facility;

(4) Include such environmental and geologic information, assessments and studies as required by the rules and regulations of the commission;

(5) Submit with the application for a hazardous waste disposal or treatment facility a profile of the environmental and economic characteristics of the area as required by the commission, including the extent of air pollution and groundwater contamination; and a profile of the health characteristics of the area which identifies all serious illness, the rate of which exceeds the state average for such illness, which might be attributable to environmental contamination;

(6) Include a fee payable to the state of Missouri which shall not exceed one thousand dollars, which shall cover the first year of the permit, if issued, but which is not refundable. If the permit is issued for more than one year, a fee equal in amount to the first year's fee shall be paid to the state of Missouri prior to issuance of the permit for each year the permit is to be in effect beyond the first year;

(7) The department shall supervise any field work undertaken to collect geologic and engineering data for submission with the application. The state geologist and departmental engineers shall review the geologic and engineering plans, respectively, and attest to their accuracy and adequacy. The applicant shall pay all reasonable costs, as determined by the commission, incurred by the department [under] **pursuant to** this subsection.

8. (1) Prior to issuing or renewing a hazardous waste facility permit, the department shall issue public notice by press release or advertisement and shall notify all record owners of adjoining property by mail directed to the last known address, and the village, town or city, if any, and the county in which the hazardous waste facility is located; and, upon request, shall hold a public hearing after public notice as required in this subsection at a location convenient to the area affected by the issuance of the permit.

(2) Prior to issuing, reviewing every five years as required in subsection 12 of this section, or renewing a hazardous waste disposal facility permit the department shall issue public notice by press release and advertisement and shall notify all record owners of property, within one mile of the outer boundaries of the site, by mail directed to the last known address; and shall hold a public hearing after public notice as required in this subsection at a location convenient to the area affected by the issuance of the permit.

9. If the department determines that the application conforms to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the standards, rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430**, it shall issue the hazardous waste facility permit, with such terms and conditions and require such testing and construction supervision as it deems necessary to protect the health of humans or the environment. The department shall act within one hundred and eighty days after receipt of the application. If the department denies the permit, it shall issue a report to the applicant stating the reason for denial of a permit.

10. A permit may be suspended or revoked whenever the department determines that the hazardous waste facility is, or has been, operated in violation of any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order or permit term or condition adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**, poses a threat to the health of humans or the environment or is creating a public nuisance.

11. Whenever a permit is issued, renewed, denied, suspended or revoked by the department, any aggrieved person, by petition filed with the department within thirty days of the decision, may appeal such decision and shall be entitled to a hearing as provided in section 260.400.

12. A permit shall be issued for a fixed term, which shall not exceed ten years in the case of any land disposal facility, storage facility, incinerator, or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after the date of its issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of federal and state law. Nothing in this subsection shall preclude the department from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued [under] **pursuant to** this section shall contain such terms and conditions as the department determines necessary to protect human health and the environment, and upon proper application by the holder and a determination by the department that the applicant is in compliance with all provisions of sections 260.350 to 260.430 and all standards, rules and regulations, orders and permit terms and conditions adopted or issued [hereunder] **pursuant to sections 260.350 to 260.430**.

13. A hazardous waste facility permit is not required for:

(1) On-site storage of hazardous wastes where such storage is exempted by the commission

by rule or regulation; however, such storage must conform to the provisions of any federal hazardous waste management act and sections 260.350 to 260.430 and the applicable standards, rules and regulations adopted [hereunder] **pursuant to sections 260.350 to 260.430** and any other applicable hazardous materials storage and spill prevention requirements provided by law;

(2) A publicly owned treatment works which has an operating permit [under] **pursuant to** section 644.051, RSMo, and is in compliance with that permit;

(3) A resource recovery facility which the department certifies uses hazardous waste as a supplement to, or substitute for, nonwaste material, and that the sole purpose of the facility is manufacture of a product rather than treatment or disposal of hazardous wastes;

(4) That portion of a facility engaged in hazardous waste resource recovery, when the facility is engaged in both resource recovery and hazardous waste treatment or disposal, provided the owner or operator can demonstrate to the department's satisfaction and the department finds that such portion is not intended and is not used for hazardous waste treatment or disposal.

14. Facilities exempted [under] **pursuant to** subsection 13 of this section must comply with the provisions of subdivisions (3) to (7) of section 260.390 and such other requirements, to be specified by rules and regulations, as are necessary to comply with any federal hazardous waste management act or regulations hereunder. Generators who use such an exempted facility shall keep records of hazardous wastes transported, except by legal flow through sewer lines, to the facility and submit such records to the department in accordance with the provisions of section 260.380 and the standards, rules and regulations adopted [hereunder.] **pursuant to sections 260.350 to 260.430. Any person, before constructing, altering or operating a resource recovery facility in this state shall file an application for a certification. Such application shall include:**

(1) **Plans, designs, engineering reports and other relevant information as specified by rule that demonstrate that the facility is designed and will operate in a manner protective of human health and the environment; and**

(2) **An application fee of not more than five hundred dollars for a facility that recovers waste generated at the same facility or an application fee of not more than one thousand dollars for a facility that recovers waste generated at off-site sources. Such fees shall be deposited in the hazardous waste fund created in section 260.391.**

**The department shall review such application for conformance with applicable laws, rules and standard engineering principles and practices. The applicant shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant to this subsection. All such funds shall be deposited in the hazardous waste fund created in section 260.391.**

15. The owner or operator of any hazardous waste facility in existence on September 28, 1977, who has achieved federal interim status [under] **pursuant to** 42 U.S.C. 6925(e), and who

has submitted to the department Part A of the federal facility permit application, may continue to receive and manage hazardous wastes in the manner as specified in the Part A application, and in accordance with federal interim status requirements, until completion of the administrative disposition of a permit application submitted pursuant to sections 260.350 to 260.430. The department may at any time require submission of, or the owner or operator may at any time voluntarily submit, a complete application for a permit pursuant to sections 260.350 to 260.430 and commission regulations. The authority to operate **[under] pursuant to** this subsection shall cease one hundred eighty days after the department has notified an owner or operator that an application for permit pursuant to sections 260.350 to 260.430 must be submitted, unless within such time the owner or operator submits a completed application therefor. Upon submission of a complete application, the authority to operate **[under] pursuant to** this subsection shall continue for such reasonable time as is required to complete the administrative disposition of the permit application. If a facility loses its federal interim status, or the Environmental Protection Agency requires the owner or operator to submit Part B of the federal application, the department shall notify the owner or operator that an application for a permit must be submitted pursuant to this subsection. In addition to compliance with the federal interim status requirements, the commission shall have the authority to adopt regulations requiring persons operating **[under the authority of] pursuant to** this subsection to meet additional state interim status requirements.

16. A license or permit shall not be issued to any person who is determined by the department to habitually engage in or to have habitually engaged in hazardous waste management practices which pose a threat to the health of humans or the environment or who is determined by the department to habitually violate or to have habitually violated the requirements of the Missouri solid or hazardous waste laws, the solid or hazardous waste laws of other states or federal laws pertaining to hazardous waste. Nor shall a license or permit be issued to any person who has been adjudged in contempt of any court order enforcing the provisions of the Missouri solid or hazardous waste laws, the solid or hazardous waste laws of other states or federal laws pertaining to hazardous waste or who has offered, in person or through an agent, any inducement, including any discussion of potential employment opportunities, to any employee of the department when such person has an application for a permit pending or a permit under review. For the purposes of this subsection, the term "person" shall include any officer or management employee of the applicant, or any officer or management employee of any corporation or business which owns an interest in the applicant, or any officer or management employee of any business which is owned either wholly or in part by any person, corporation, or business which owns an interest in the applicant.

17. No person, otherwise qualified **[under] pursuant to** sections 260.350 to 260.430 for a license to transport hazardous wastes or for a permit to construct, substantially alter or operate a hazardous waste facility, shall be denied such license or permit on the basis of a lack of need for

such transport service or such facility because of the existence of other services or facilities capable of meeting that need; except that permits for hazardous waste facilities may be denied on determination made by the department that the financial resources of the persons applying are such that the continued operation of the sites in accordance with sections 260.350 to 260.430 cannot be reasonably assured or on determination made by the department that the probable volume of business is insufficient to ensure and maintain the solvency of then existing permitted hazardous waste facilities.

18. All hazardous waste landfills constructed after October 31, 1980, shall have a leachate collection system. The rules and regulations of the commission shall treat and protect all aquifers to the same level of protection. The provisions of this subsection shall not apply to the disposal of tailings and slag resulting from mining, milling and primary smelting operations.

**19. Any railroad corporation as defined in section 388.010, RSMo, that transports any hazardous waste as defined in section 260.360 or any hazardous substance as defined in section 260.500 shall pay an annual fee of three hundred fifty dollars. Fees collected pursuant to this subsection shall be deposited in the hazardous waste fund created in section 260.391.**

260.475. 1. Every hazardous waste generator shall pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars per ton annually on all hazardous waste which is discharged, deposited, dumped or placed into or on the soil as a final action, and two dollars per ton on all other hazardous waste transported off site. No fee shall be imposed upon any hazardous waste generator who registers less than ten tons of hazardous waste annually pursuant to section 260.380, or upon:

(1) Hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site;

(2) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(3) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore and smelter slag waste from the processing of materials into reclaimed metals;

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

(b) Transformed into new products which are not wastes;

(c) Destroyed or treated to render the hazardous waste nonhazardous; or

(d) Waste discharged to a publicly owned treatment works.

2. The fees imposed in this section shall be reported and paid to the department on an

annual basis not later than the first of January. The payment shall be accompanied by a return in such form as the department may prescribe.

3. **Thirty percent of** all moneys collected or received by the department [under] **pursuant to** this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste remedial fund created in section 260.480. **Seventy percent of all moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391.** Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

4. If any generator or transporter fails or refuses to pay the fees imposed by this section, or fails or refuses to furnish any information reasonably requested by the department relating to such fees, there shall be imposed, in addition to the fee determined to be owed, a penalty of fifteen percent of the fee, **thirty percent of** which shall be deposited in the hazardous waste remedial fund, **and seventy percent of which shall be deposited in the hazardous waste fund**

5. If the fees or any portion of the fees imposed by this section are not paid by the date prescribed for such payment, there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for its payment until payment is actually made, **thirty percent of** which shall be deposited in the hazardous waste remedial fund, **and seventy percent of which shall be deposited in the hazardous waste fund**

6. The state treasurer is authorized to deposit all of the moneys in the hazardous waste remedial fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided for by law relative to state deposits. Interest received on such deposits shall be credited to the hazardous waste remedial fund.

7. No fee shall be collected [under] **pursuant to** this section after January 1, [2004] **2005**.  
260.479. 1. The hazardous waste management commission shall establish, by rule, five categories of hazardous waste based on the tonnage produced annually by individual generators and each category shall be further divided into subdivisions based upon the management method. Subdivision A shall include waste which is placed in a hazardous waste disposal facility or which is stored for a period of more than one hundred eighty days; provided, however, for the purposes of this section, the commission may identify hazardous waste which shall be taxed [under] **pursuant to** subdivision A when stored for longer than ninety days as well as waste which may be stored for up to one year and taxed as provided in subdivision B below. Subdivision B shall include all other hazardous waste produced. Category 1 shall contain the range of greatest production and category 5 the range of least production with categories 2, 3 and 4 containing those ranges of waste production in between 1 and 5. The commission shall review the categories and

establish such categories that will, as near as practical, generate approximately [one] **two** and [one-half] **eight-tenths** million dollars annually **for the first fiscal year fees are assessed pursuant to this section, and such revenue target shall be adjusted annually thereafter by the same percentage as the change in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency.** The director shall annually request that [an amount] **one million dollars** be appropriated from general revenue [or federal] funds [which is at least equal to one-third the amount levied against hazardous waste generators pursuant to this section] **for deposit in the hazardous waste remedial fund created pursuant to section 260.480.**

2. **Except as provided in this subsection,** based on the categories established pursuant to this section, each hazardous waste generator registered with the department of natural resources, except the state and any political subdivision thereof, shall pay a fee based on the volume of waste produced in each of the five categories and managed [under] **pursuant to subdivisions A and B as follows:**

Category	Subdivision A	Subdivision B
1	<del>[\$50,000]</del> <b>\$80,000</b>	<del>[\$25,000]</del> <b>\$40,000</b>
2	\$30,000	\$15,000
3	\$20,000	\$10,000
4	\$10,000	\$ 5,000
5	\$ 1,000	\$ 500

**Category 1 limitations established pursuant to this subsection shall be adjusted annually by the same percentage as the change in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency.** No company shall pay more than [fifty] **eighty** thousand dollars annually [under the provisions of] **pursuant to this section[.] ; provided that such maximum amount shall be adjusted annually by the same percentage as the change in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency.** **No individual generator subject to a fee pursuant to this section shall pay less than fifty dollars annually.**

3. No tax shall be imposed [under] **pursuant to** this section upon hazardous waste generators whose waste consists solely of waste oil or facilities licensed [under] **pursuant to** chapter 197, RSMo. The commission may exempt intermittent generators or generators of very small volumes of hazardous waste from payment of fees required [under] **pursuant to** this section,

provided those generators comply with all other applicable provisions of sections 260.360 to 260.430.

4. Any hazardous waste generator registered with the department which discharges waste to a publicly owned treatment works having an approved pretreatment program as required by chapter 204, RSMo, shall not pay any fee required in sections 260.350 to 260.550 on such waste discharged which is in compliance with pretreatment requirements. The hazardous waste management commission may exempt such generators from the provisions of sections 260.350 to 260.430 if such exemption will not be in violation of the federal Resource Conservation and Recovery Act.

5. No fee shall be imposed [under] **pursuant to** this section [upon any hazardous waste fuel which is produced from hazardous waste by processing, blending or other treatment and which fuel is generated after June 30, 1987, or] upon any hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site, or upon smelter slag waste from the processing of materials into reclaimed metals. **Fees on hazardous waste fuel produced from hazardous waste by processing, blending or other treatment shall be assessed and collected only at the facility where such hazardous waste fuel is utilized as a substitute for other fuel. No facility using hazardous waste fuel shall pay more than eighty thousand dollars annually pursuant to this subsection for the first fiscal year fees are assessed pursuant to this section, and such maximum amount shall be adjusted annually thereafter by the same percentage as the change in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. This subsection shall not be construed to apply to hazardous waste used directly as a fuel.**

6. The department may establish by rule and regulation categories of waste based upon waste characteristics pursuant to subsection 2 of section 260.370. When the commission adopts hazardous waste categories, it shall establish and annually revise a fee schedule based upon waste characteristics. Each generator shall annually pay a fee, in lieu of the fee required in subsection 2 of this section, based upon the volume of waste produced annually within each hazard category.

7. All fees within this section shall be based on hazardous waste produced within the preceding state fiscal year beginning with July first of the year this section goes into effect and payable at the end of the calendar year on December thirty-first and annually thereafter in the same manner.

8. The department shall promptly transmit **fifty-five percent of all** funds collected [under] **pursuant to** this section to the director of revenue for deposit in the hazardous waste remedial fund **created pursuant to section 260.480. The department shall promptly transmit forty-five percent of all funds collected pursuant to this section to the director of revenue for deposit in the hazardous waste fund created pursuant to section 260.391.**

9. [This section shall become effective on January 1, 1987, or at such time that annual receipts to the hazardous waste remedial fund as established in section 260.480 are less than one million five hundred thousand dollars, whichever first occurs. The provisions of subsection 4 of section 260.478,] Notwithstanding **any other provision of law to the contrary**, no tax based on the number of employees employed by a hazardous waste generator shall be collected [after January 1, 1987]. No tax or fee shall be levied pursuant to this section after January 1, [2004] **2005**.

260.480. 1. There is hereby created within the state treasury a fund to be known as the "Hazardous Waste Remedial Fund". All moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or any other moneys so designated shall be deposited in the state treasury to the credit of such fund, and shall be invested to generate income to the fund. Notwithstanding the provisions of section 33.080, RSMo, the unexpended balance in the hazardous waste remedial fund at the end of each fiscal year shall not be transferred to the general revenue fund except as directed by the general assembly by appropriation to replace funds appropriated from the general revenue fund for the purposes for which expenditures from the hazardous waste remedial fund are allowed.

2. The department may use the fund, upon appropriation, for the nonfederal share and any other expenditures which are not covered [under] **pursuant to** the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, for the following purposes:

(1) Administrative services as appropriate and necessary for the identification, assessment and cleanup of abandoned or uncontrolled sites [under] **pursuant to** sections 260.435 to 260.550;

(2) Payments to other state agencies for such services consistent with sections 260.435 to 260.550, upon proper warrant issued by the commissioner of administration, including, but not limited to, the department of health for the purpose of conducting health studies of persons exposed to waste from an uncontrolled or abandoned hazardous waste site or exposed to the release of any hazardous substance as defined in section 260.500;

(3) Acquisition of property as provided in section 260.420;

(4) [Emergency response activities as provided in sections 260.500 to 260.550;

(5)] The study of the development of a hazardous waste facility in Missouri as authorized in section 260.037;

[(6)] (5) Financing the nonfederal share of the cost of cleanup and site remediation activities as well as post-closure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; and

[(7)] (6) Reimbursement of owners or operators who accept waste pursuant to departmental orders [under] **pursuant to** subdivision (2) of subsection 1 of section 260.420.

3. Neither the state of Missouri nor its officers, employees or agents shall be liable for any injury caused by a dangerous condition at any abandoned or uncontrolled site unless such

condition is the result of an act or omission constituting gross negligence on the part of the state, its officers, employees or agents.

4. The department may contract with any person to perform the acts authorized in this section.

5. No moneys shall be available from the fund for abandoned site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of any funds expended from the fund through litigation or cooperative agreements with responsible persons. All moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited with the state treasurer and credited to the account of the hazardous waste remedial fund.

260.500. As used in sections 260.500 to 260.550, unless the context clearly indicates otherwise, the following terms mean:

(1) "Cleanup", all actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance;

(2) "Cleanup costs", all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the department of natural resources in the prevention or mitigation of damages from a hazardous substance emergency or the cleanup of a hazardous substance involved in a hazardous substance emergency, **including a proportionate share of those costs necessary to maintain the services authorized in sections 260.500 to 260.550;**

(3) "Department", the department of natural resources;

(4) "Director", the director of the department of natural resources;

(5) "Hazardous substance", any substance or mixture of substances that presents a danger to the public health or safety or the environment and includes:

(a) Any hazardous waste identified or listed by the department **[under] pursuant to** sections 260.350 to 260.430;

(b) Any element, compound, mixture, solution, or substance designated pursuant to Sections 101(14) and 102 of the Comprehensive **[Environment] Environmental** Response, Compensation and Liability Act of 1980, **as amended, and Section 302 of the Superfund Amendments and Reauthorization Act of 1986, as amended;** and

(c) Any hazardous material designated by the Secretary of the United States Department of Transportation **[under] pursuant to** the Hazardous Materials Transportation Act;

(d) "Hazardous substances" does not include radioactive materials, wastes, emissions or discharges that are licensed or regulated by laws of the federal government or of this

state. However, such material released due to a transportation accident shall be considered a hazardous substance;

(6) "Hazardous substance emergency":

(a) Any release of hazardous substances in quantities equal to or in excess of those determined pursuant to Section 101(14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, **as amended, and Section 304 of the Superfund Amendments and Reauthorization Act of 1986, as amended;**

(b) Any release of petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) in excess of fifty gallons for liquids or three hundred cubic feet for gases, except that the notification and reporting of any release of natural gas or natural gas mixtures by or from intrastate facilities, regardless of the quantity of such release, shall be as specified by the public service commission rather than pursuant to the notification and reporting requirements contained in, or authorized by, sections 260.500 to 260.550. Interstate natural gas pipeline facilities shall report natural gas releases to the state and the National Response Center in accordance with federal Department of Transportation regulatory requirements;

(c) Any release of a hazardous waste which is reportable **[under] pursuant to** sections 260.350 to 260.430;

(d) Any release of a hazardous substance which requires immediate notice **[under] pursuant to** Part 171 of Title 49 of the Code of Federal Regulations;

(e) The department **[shall] may** promulgate rules and regulations identifying the substances and the quantities thereof which, if released, constitute a hazardous substance emergency;

(7) "Person", any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(8) "Person having control over a hazardous substance", any person producing, handling, storing, transporting, refining, or disposing of a hazardous substance when a hazardous substance emergency occurs, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous substance emergency occurs, whether they own the hazardous substance or are operating under a lease, contract, or other agreement with the legal owner thereof;

(9) "Release", any threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a substance into or onto the land, air or waters of the state unless done in compliance with the conditions of a federal or state permit, unless the substance is confined and is expected to stay confined to property owned, leased or otherwise controlled by the person having control over the substance, or unless, in the case of pesticides, if application is done in

accordance with the product label;

(10) "State of Missouri basic emergency operations plan", the state plan, its annexes, and appendices as developed or maintained by the state emergency management agency for response to natural and man-made disasters in this state;

(11) "Waters of the state", all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

260.535. Moneys received pursuant to the provisions of sections 260.500 to 260.550 which are not required by article IX, section 7 of the constitution to be distributed to schools shall be deposited in the hazardous waste [remedial] fund **created in section 260.391** and shall, upon appropriation, be used for control, abatement, analysis, cleanup, investigation and other reasonable costs incurred when responding to hazardous substance emergencies, or shall be used to reimburse the federal government for federal funds expended for the purposes named in this section. All other costs of the department necessary to carry out the provisions of sections 260.500 to 260.550 shall be **paid from the hazardous waste fund**, appropriated from general revenue or **paid** from available federal funds.

260.546. 1. In the event that a hazardous substance release occurs for which a political subdivision or volunteer fire protection association as defined in section 320.300, RSMo, provides emergency services, the person having control over a hazardous substance shall be liable for such reasonable cleanup costs incurred by the political subdivision or volunteer fire protection association. Such liability includes the cost of materials, supplies and contractual services actually used to secure an emergency situation. The liability may also include the cost for contractual services which are not routinely provided by the department or political subdivision or volunteer fire protection association. Such liability shall not include the cost of normal services which otherwise would have been provided. Such liability shall not include budgeted administrative costs or the costs for duplicate services if multiple response teams are requested by the department or political subdivision unless, in the opinion of the department or political subdivision, duplication of service was required to protect the public health and environment. Such liability shall be established upon receipt by the person having control of the spilled hazardous substance of an itemized statement of costs provided by the political subdivision.

2. Full payment shall be made within thirty days of receipt of the cost statement unless the person having control over the hazardous substance contests the amount of the costs pursuant to this section. If the person having control over the hazardous substance elects to contest the payment of such costs, he shall file an appeal with the director within thirty days of receipt of the cost statement.

3. Upon receipt of such an appeal, the director shall notify the parties involved of the appeal and collect such evidence from the parties involved as he deems necessary to make a determination of reasonable cleanup costs. Within thirty days of notification of the appeal, the director shall notify the parties of his decision. The director shall direct the person having control over a hazardous substance to pay those costs he finds to be reasonable and appropriate. The determination of the director shall become final thirty days after receipt of the notice by the parties involved unless prior to such date one of the involved parties files a petition for judicial review pursuant to chapter 536, RSMo.

4. The political subdivision or volunteer fire protection association may apply to the department for reimbursement from the hazardous waste [remedial] fund created in section [260.535] **260.391**, for the costs for which the person having control over a hazardous substance shall be liable if the political subdivision or volunteer fire protection association is able to demonstrate a need for immediate relief for such costs and believes it will not receive prompt payment from the person having control over a hazardous substance. When the liability owed to the political subdivision or volunteer fire protection association by the person having control over a hazardous substance is paid, the political subdivision or volunteer fire protection association shall reimburse the department for any payment it has received from the hazardous waste remedial fund. Such reimbursement to a political subdivision or volunteer fire protection association by the department shall be paid back to the department by the political subdivision or volunteer fire protection association within that time limit imposed by the department notwithstanding failure of the person having control over a hazardous substance to reimburse the political subdivision or volunteer fire protection association within that time.

260.569. 1. The department shall be reimbursed for its site-specific costs incurred in administration and oversight of the voluntary cleanup. The department shall bill applicants who conduct the voluntary cleanup at rates established by rule by the hazardous waste management commission. Such rates shall not be more than the lesser of the costs to the department or one hundred dollars per hour. The department shall furnish to the applicant a complete, full and detailed accounting of the costs incurred by the department for which the applicant is charged. The applicant may appeal any charge to the commission within thirty days of receipt of the bill. Appeal to the commission shall stay the required payment date until thirty days following the rendering of the decision of the commission. The department of natural resources shall initially draw down its charges against the application fee. Timely remittance of reimbursements, as provided in subsection 3 of this section, to the department is a condition of continuing participation. If, after the conclusion of the remedial action, a balance remains, the department shall refund that amount within sixty days. If the department fails to render any decision or take any action within the time period specified in sections 260.565 to 260.575, then the applicant shall not be required to reimburse the department for costs incurred for such review or action.

2. All funds remitted by the applicant conducting the voluntary cleanup shall be deposited into the hazardous waste **remedial** fund **created in section 260.480** and shall be used by the department upon appropriation for its administrative and oversight costs.

3. The department may terminate an applicant from further participation for cause. Grounds for termination include, but are not limited to:

(1) Discovery of conditions such as to warrant action [under] **pursuant to** sections 260.350 to 260.480, as amended, the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., as amended, or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601 et seq., as amended;

(2) Failure to submit cost reimbursements within sixty days following notice from the department that such reimbursements are due;

(3) Failure to submit required information within ninety days following notice from the department that such information is required;

(4) Failure to submit a remedial action plan within ninety days following notice from the department that such plan is due;

(5) Failure to properly implement the remedial action plan; and

(6) Continuing noncompliance with any of the provisions of sections 260.565 to 260.575 or the rules and regulations promulgated [thereunder] **pursuant to sections 260.565 to 260.575**.

4. Upon termination pursuant to subdivision (1) of subsection 3 of this section or subsection 11 of section 260.567, if there is a balance in the applicant's application fee after deducting costs incurred by the department of natural resources, such balance shall be refunded within sixty days. Upon termination pursuant to subdivisions (2) to (6) of subsection 3 of this section, if a balance remains in the applicant's application fee, such balance shall be forfeited and deposited in the hazardous waste **remedial** fund.

**260.900. As used in sections 260.900 to 260.960, unless the context clearly indicates otherwise, the following terms mean:**

(1) **"Abandoned drycleaning facility", any real property premises or individual leasehold space in which a drycleaning facility formerly operated;**

(2) **"Active drycleaning facility", any real property premises or individual leasehold space in which a drycleaning facility currently operates;**

(3) **"Chlorinated drycleaning solvent", any drycleaning solvent which contains a compound which has a molecular structure containing the element chlorine;**

(4) **"Commission", the hazardous waste management commission created in section 260.365;**

(5) **"Corrective action", those activities described in subsection 1 of section 260.925;**

(6) **"Corrective action plan", a plan approved by the director to perform**

**corrective action at a drycleaning facility;**

**(7) "Department", the Missouri department of natural resources;**

**(8) "Director", the director of the Missouri department of natural resources;**

**(9) "Drycleaning facility", a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on site utilizing a process that involves any use of drycleaning solvents. Drycleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a drycleaning facility but does not include prisons, governmental entities, hotels, motels or industrial laundries. Drycleaning facility does include coin-operated drycleaning facilities;**

**(10) "Drycleaning solvent", any and all nonaqueous solvents used or to be used in the cleaning of garments and other fabrics at a drycleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, and petroleum-based solvents, and the products into which such solvents degrade;**

**(11) "Drycleaning unit", a machine or device which utilizes drycleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system;**

**(12) "Environmental response surcharge", either the active drycleaning facility registration surcharge or the drycleaning solvent surcharge;**

**(13) "Fund", the drycleaning environmental response trust fund created in section 260.920;**

**(14) "Immediate response to a release", containment and control of a known release in excess of a reportable quantity and notification to the department of any known release in excess of a reportable quantity;**

**(15) "Operator", any person who is or has been responsible for the operation of drycleaning operations at a drycleaning facility;**

**(16) "Owner", any person who owns the real property where a drycleaning facility is or has operated;**

**(17) "Person", an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization;**

**(18) "Release", any spill, leak, emission, discharge, escape, leak or disposal of drycleaning solvent from a drycleaning facility into the soils or waters of the state;**

**(19) "Reportable quantity", a known release of a drycleaning solvent deemed reportable by applicable federal or state law or regulation.**

**260.905. 1. The commission shall promulgate and adopt such initial rules and regulations, effective no later than July 1, 2002, as shall be necessary to carry out the**

**purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules, the commission shall meet with representatives of the dry cleaning industry and other interested parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations or change existing rules and regulations when necessary to carry out the purposes and provisions of sections 260.900 to 260.960.**

**2. Any rule or regulation adopted pursuant to sections 260.900 to 260.960 shall be reasonably necessary to protect human health, to preserve, protect and maintain the water and other natural resources of this state and to provide for prompt corrective action of releases from drycleaning facilities. Consistent with these purposes, the commission shall adopt rules and regulations, effective no later than July 1, 2002:**

**(1) Establishing performance standards for drycleaning facilities first brought into use on or after the effective date of rules and regulations authorized by this subsection. Such performance standards shall be effective when the rules and regulations adopted by the commission become final. The performance standards for new drycleaning facilities shall allow the use of new technology as it becomes available and shall at a minimum include provisions which are at least as protective of human health and the environment as the following:**

**(a) A requirement for the proper storage and disposal of those wastes which are generated at an active drycleaning facility and which contain any quantity of drycleaning solvent;**

**(b) A prohibition of the discharge of wastewater from drycleaning units or of drycleaning solvent from drycleaning operations to any sanitary sewer or septic tank or to the waters of this state;**

**(c) A requirement that dikes or other containment structures be installed around each drycleaning unit and each drycleaning solvent or waste storage area, which structures shall be capable of containing a leak, spill or release of drycleaning solvent;**

**(d) A requirement that those portions of all diked floor surfaces upon which any drycleaning solvent may leak, spill or otherwise be released be of epoxy, steel or other material impervious to drycleaning solvents;**

**(e) A requirement that all drycleaning solvents be delivered to drycleaning facilities by means of closed, direct-coupled delivery systems, but only after such systems become generally available;**

**(2) Adopting a schedule requiring the retrofitting of active drycleaning facilities in existence on the effective date of rules and regulations authorized by subdivision (1) of this subsection to implement the performance standards established pursuant to subdivision (1) of this subsection. The schedule may phase in the standards authorized by this subdivision at different times but shall make all such standards effective no later**

than three years after the effective date of sections 260.900 to 260.960. The requirement of retrofitting as provided in this subdivision shall not require an operator to replace an existing drycleaning unit;

(3) Establishing requirements that owners who close drycleaning facilities remove drycleaning solvents and wastes from such facilities in order to prevent any future releases;

(4) Establishing criteria to prioritize the expenditure of funds from the drycleaning environmental response trust fund. The criteria shall include consideration of:

(a) The benefit to be derived from corrective action compared to the cost of conducting such corrective action;

(b) The degree to which human health and the environment are actually affected by exposure to contamination;

(c) The present and future use of an affected aquifer or surface water;

(d) The effect that interim or immediate remedial measures will have on future costs; and

(e) Such additional factors as the commission considers relevant;

(5) Establishing criteria under which a determination may be made by the department of the level at which corrective action shall be deemed completed. Criteria for determining completion of corrective action shall be based on the factors set forth in subdivision (4) of this subsection; and:

(a) Individual site characteristics including natural remediation processes;

(b) Applicable state water quality standards;

(c) Whether deviation from state water quality standards or from established criteria is appropriate, based on the degree to which the desired remediation level is achievable and may be reasonably and cost effectively implemented, subject to the limitation that where a state water quality standard is applicable, a deviation may not result in the application of standards more stringent than that standard; and

(d) Such additional factors as the commission considers relevant.

**260.910. 1. No person shall:**

(1) Operate an active drycleaning facility in violation of sections 260.900 to 260.960, rules and regulations adopted pursuant to sections 260.900 to 260.960 or orders of the director pursuant to sections 260.900 to 260.960;

(2) Prevent or hinder a properly identified officer or employee of the department or other authorized agent of the director from entering, inspecting, sampling or responding to a release at reasonable times and with reasonable advance notice to the operator as authorized by sections 260.900 to 260.960;

**(3) Knowingly make any false material statement or representation in any record, report or other document filed, maintained or used for the purpose of compliance with sections 260.900 to 260.960;**

**(4) Knowingly destroy, alter or conceal any record required to be maintained by sections 260.900 to 260.960 or rules and regulations adopted pursuant to sections 260.900 to 260.960;**

**(5) Willfully allow a release in excess of a reportable quantity or knowingly fail to make an immediate response to a release in accordance with sections 260.900 to 260.960 and rules and regulations pursuant to sections 260.900 to 260.960.**

**2. The director may bring a civil damages action against any person who violates any provisions of subsection 1 of this section. Such civil damages may be assessed in an amount not to exceed five hundred dollars for each violation and are in addition to any other penalty assessed by law.**

**3. In assessing any civil damages pursuant to this section, a court of competent jurisdiction shall consider, when applicable, the following factors:**

**(1) The extent to which the violation presents a hazard to human health;**

**(2) The extent to which the violation has or may have an adverse effect on the environment;**

**(3) The amount of the reasonable costs incurred by the state in detection and investigation of the violation; and**

**(4) The economic savings realized by the person in not complying with the provision for which a violation is charged.**

**260.915. Each operator of an active drycleaning facility shall register with the department on a form provided by the department according to procedures established by the department by rule.**

**260.920. 1. There is hereby created within the state treasury a fund to be known as the "Drycleaning Environmental Response Trust Fund". All moneys received from the environmental response surcharges, fees, gifts, bequests, donations and moneys recovered by the state pursuant to sections 260.900 to 260.960, except for any moneys paid under an agreement with the director or as civil damages, or any other money so designated shall be deposited in the state treasury to the credit of the drycleaning environmental response trust fund, and shall be invested to generate income to the fund. Notwithstanding the provisions of section 33.080, RSMo, the unexpended balance in the drycleaning environmental response trust fund at the end of each fiscal year shall not be transferred to the general revenue fund.**

**2. Moneys in the fund may be expended for only the following purposes and for no other government purpose:**

**(1) The direct costs of administration and enforcement of sections 260.900 to 260.960; and**

**(2) The costs of corrective action as provided in section 260.925.**

**3. The state treasurer is authorized to deposit all of the moneys in the drycleaning environmental response trust fund in any of the qualified depositories of the state. All such deposits shall be secured in such a manner and shall be made upon such terms and conditions as are now or may hereafter be provided by law relative to state deposits. Interest received on such deposits shall be credited to the drycleaning environmental response trust fund.**

**4. Any funds received pursuant to sections 260.900 to 260.960 and deposited in the drycleaning environmental response trust fund shall not be considered a part of "total state revenue" as provided in sections 17 and 18 of article X of the Missouri Constitution.**

**260.925. 1. On and after July 1, 2002, moneys in the fund shall be utilized to address contamination resulting from releases of drycleaning solvents as provided in sections 260.900 to 260.960. Whenever a release poses a threat to human health or the environment, the department, consistent with rules and regulations adopted by the commission pursuant to subdivisions (4) and (5) of subsection 5 of section 260.905, shall expend moneys available in the fund to provide for:**

**(1) Investigation and assessment of a release from a drycleaning facility, including costs of investigations and assessments of contamination which may have moved off the drycleaning facility;**

**(2) Necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;**

**(3) Remediation of releases from drycleaning facilities, including contamination which may have moved off of the drycleaning facility, which remediation shall consist of the preparation of a corrective action plan and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost effective, technologically feasible and reliable, provides adequate protection of human health and environment and to the extent practical minimizes environmental damage;**

**(4) Operation and maintenance of corrective action;**

**(5) Monitoring of releases from drycleaning facilities including contamination which may have moved off of the drycleaning facility;**

**(6) Payment of reasonable costs incurred by the director in providing field and laboratory services;**

**(7) Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release**

or cleanup or remediation activities;

(8) Removal and proper disposal of wastes generated by a release of a drycleaning solvent; and

(9) Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before the effective date of sections 260.900 to 260.960.

2. Nothing in subsection 1 of this section shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of drycleaning solvents from a drycleaning facility. Moneys from the fund shall not be used:

(1) For corrective action at sites that are contaminated by solvents normally used in drycleaning operations where the contamination did not result from the operation of a drycleaning facility;

(2) For corrective action at sites, other than drycleaning facilities, that are contaminated by drycleaning solvents which were released while being transported to or from a drycleaning facility;

(3) To pay any fine or penalty brought against a drycleaning facility operator under state or federal law; or

(4) To pay any costs related to corrective action at a drycleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list.

3. Nothing in sections 260.900 to 260.960 shall be construed to restrict the department from temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to protect public health and the environment.

4. At any multisource site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more drycleaning facilities and for that proportionate share of the liability only.

5. At any multisource site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall

**be controlling for costs incurred during the pendency of the appeal.**

**6. Any authorized officer, employee or agent of the department, or any person under order or contract with the department, may enter onto any property or premises, at reasonable times and with reasonable advance notice to the operator, to take corrective action where the director determines that such action is necessary to protect the public health or environment. If consent is not granted by the operator regarding any request made by any officer, employee or agent of the department, or any person under order or contract with the department, under the provisions of this section, the director may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.**

**7. Notwithstanding any other provision of sections 260.900 to 260.960, in the discretion of the director, an operator may be responsible for up to one hundred percent of the costs of corrective action attributable to such operator if the director finds, after notice and an opportunity for a hearing in accordance with chapter 536, RSMo, that:**

**(1) Requiring the operator to bear such responsibility will not prejudice another owner, operator or person who is eligible, pursuant to the provisions of sections 260.900 to 260.960, to have corrective action costs paid by the fund; and**

**(2) The operator:**

**(a) Caused a release in excess of a reportable quantity by willful or wanton actions and such release was caused by operating practices in violation of existing laws and regulations at the time of the release; or**

**(b) Is in arrears for moneys owed pursuant to sections 260.900 to 260.960, after notice and an opportunity to correct the arrearage; or**

**(c) Materially obstructs the efforts of the department to carry out its obligations pursuant to sections 260.900 to 260.960; except that, the exercise of legal rights shall not constitute a substantial obstruction; or**

**(d) Caused or allowed a release in excess of a reportable quantity because of a willful material violation of sections 260.900 to 260.960 or the rules and regulations adopted by the commission pursuant to sections 260.900 to 260.960.**

**8. For purposes of subsection 7 of this section, unless a transfer is made to take advantage of the provisions of subsection 7 of this section, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator. To the extent that an owner or operator is responsible for corrective action costs pursuant to subsection 7 of this section, such owner or operator shall not be entitled to the**

**exemption provided in subsection 3 of section 260.930.**

**9. The fund shall not be liable for the payment of costs in excess of two million dollars at any one contaminated drycleaning site. Additionally, the fund shall not be liable for the payment of costs for any one site in excess of twenty-five percent of the total moneys in the fund during any fiscal year. For purposes of this subsection, "contaminated drycleaning site" means the areal extent of soil or ground water contamination with drycleaning solvents.**

**10. The owner or operator of an active drycleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active drycleaning facility. The owner of an abandoned drycleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an abandoned drycleaning facility. Nothing in this subsection shall be construed to prohibit the department from taking corrective action because the department cannot obtain the deductible.**

**11. An owner or operator shall not be allowed to participate in the fund unless such owner or operator complies with the performance standards established pursuant to subsection 2 of section 260.905.**

**260.930. 1. Neither the state of Missouri, the fund, the commission, the director nor the department or agent or employees thereof, shall be liable for loss of business, damages or taking of property associated with any corrective action taken pursuant to sections 260.900 to 260.960.**

**2. Nothing in sections 260.900 to 260.960 shall establish or create any liability or responsibility on the part of the commission, the director, the department or the state of Missouri, or agents or employees thereof, to pay any corrective action costs from any source other than the fund or to take corrective action if the moneys in the fund are insufficient to do so.**

**3. Nothing in sections 260.900 to 260.960 shall be construed to abrogate or limit any right, remedy, causes of action, or claim by any person sustaining personal injury or property damage as a result of any release from a drycleaning facility, nor shall anything in sections 260.900 to 260.960 be construed to abrogate or limit any liability of any person in any way responsible for any release from a drycleaning facility or any damages for personal injury or property damages caused by such a release.**

**4. Moneys in the fund shall not be used for compensating third parties for bodily injury or property damage caused by a release from a drycleaning facility, other than property damage included in the corrective action plan approved by the director.**

**5. To the extent that an operator, owner or other person is eligible pursuant to the provisions of sections 260.900 to 260.960, to have corrective action costs paid by the**

**fund, no administrative or judicial claim may be made under state law against any such operator, owner or other person by or on behalf of a state or local government or by any person to either compel corrective action at the dry cleaning facility site or seek recovery of the costs of corrective action at the dry cleaning facility which result from the release of dry cleaning solvents from that dry cleaning facility or to compel corrective action or seek recovery of the costs of corrective action which result from the release of dry cleaning solvents from a dry cleaning facility. The provisions of this subsection shall apply to any dry cleaning facility or dry cleaning facility site which has been included in a corrective action plan approved by the director. The director shall only approve a corrective action plan after making a determination that a sufficient balance in the fund exists to implement the plan.**

**260.935. 1. Every active drycleaning facility, shall pay, in addition to any other environmental response surcharges, an annual drycleaning facility registration surcharge as follows:**

**(1) Five hundred dollars for facilities which use no more than one hundred forty gallons of chlorinated solvents and no more than one thousand four hundred gallons of petroleum, non-chlorinated solvents per year;**

**(2) One thousand dollars for facilities which use more than one hundred forty gallons of chlorinated solvents or more than one thousand four hundred gallons of petroleum, non-chlorinated solvents per year and less than three hundred sixty gallons of chlorinated solvents and less than three thousand six hundred gallons of petroleum, non-chlorinated solvents per year; and**

**(3) Fifteen hundred dollars for facilities which use at least three hundred sixty gallons of chlorinated solvents or at least three thousand six hundred gallons of petroleum, non-chlorinated solvents per year.**

**2. The active drycleaning facility registration surcharge imposed by this section shall be reported and paid to the department on an annual basis. The commission shall prescribe by administrative rule the procedure for the report and payment required by this section.**

**3. The department shall provide each person who pays a drycleaning facility registration surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.**

**4. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the drycleaning environmental response trust fund created in section 5 of this act. Following each annual reporting date, the state treasurer shall certify the amount**

deposited in the fund to the department.

5. If any person does not pay the active drycleaning facility registration surcharge or any portion of the active drycleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the active drycleaning facility registration surcharge owed by such person, a penalty of fifteen percent of the active drycleaning facility registration surcharge. Such penalty shall be deposited in the drycleaning environmental response trust fund.

6. If any person does not pay the active drycleaning facility registration surcharge or any portion of the active drycleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall, also, impose interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the drycleaning environmental response trust fund.

**260.940. 1.** Every seller or provider of drycleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a drycleaning solvent surcharge on the sale or provision of drycleaning solvent.

2. The amount of the drycleaning solvent surcharge imposed by this section on each gallon of drycleaning solvent shall be an amount equal to the product of the solvent factor for the drycleaning solvent and the rate of ten dollars per gallon.

3. The solvent factor for each drycleaning solvent is as follows:

(1) For Perchloroethylene, the solvent factor is 1.00;

(2) For 1,1,1-trichloroethane, the solvent factor is 1.00;

(3) For other chlorinated drycleaning solvents, the solvent factor is 1.00; and

(4) For any nonchlorinated drycleaning solvent, the solvent factor is 0.05.

4. In the case of a fraction of a gallon, the drycleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

5. The drycleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the drycleaning solvent, regardless of the location of such seller or provider.

6. The drycleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. The commission shall prescribe by administrative rule the procedure for the payment required by this section.

7. The department shall provide each person who pays a drycleaning solvent surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt

shall be produced for inspection at the request of any authorized representative of the department.

8. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the drycleaning environmental response trust fund created in section 260.920. Following each annual or quarterly reporting date, the state treasurer shall certify the amount deposited to the department.

9. If any seller or provider of drycleaning solvent fails or refuses to pay the drycleaning solvent surcharge imposed by this section, the department shall impose and such seller or provider shall pay, in addition to the drycleaning solvent surcharge owed by the seller or provider, a penalty of fifteen percent of the drycleaning solvent surcharge. Such penalty shall be deposited in the drycleaning environmental response trust fund.

10. If any person does not pay the drycleaning solvent surcharge or any portion of the drycleaning solvent surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the drycleaning environmental response trust fund.

11. An operator of a drycleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the drycleaning solvent charge, as provided in section 260.940. Any operator of a drycleaning facility who fails to obey the provisions of this section shall be required to pay the drycleaning solvent surcharge as provided in subsections 2, 3 and 4 of this section for any drycleaning solvent purchased or obtained from a seller or provider who fails to pay the proper drycleaning solvent surcharge as determined by the department. Any operator of a drycleaning facility who fails to follow the provisions of this subsection shall, also, be charged a penalty of fifteen percent of the drycleaning solvent surcharge owed. Any operator of a drycleaning facility who fails to obey the provisions of this subsection shall also be subject to the interest provisions of subsection 10 of this section. If a seller or provider of drycleaning solvent charges the operator of a drycleaning facility the drycleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge. Such surcharges, penalties and interest shall be collected by the

department, and all moneys collected pursuant to this subsection shall be deposited in the drycleaning environmental response trust fund.

**260.945. 1.** If the unobligated principal of the fund equals or exceeds five million dollars on April first of any year, the active drycleaning facility registration surcharge imposed by section 260.935 and the drycleaning solvent surcharge imposed by section 260.940 shall not be collected on or after the next July first until such time as on April first of any year, thereafter, the unobligated principal balance of the fund equals two million dollars or less, then the active drycleaning facility registration surcharge imposed by section 260.935 and the drycleaning solvent surcharge imposed by section 260.940 shall again be collected on and after the next July first.

**2.** Not later than April fifth of each year, the state treasurer shall notify the department of the amount of the unobligated balance of the fund on April first of such year. Upon receipt of the notice, the department shall notify the public if the active drycleaning facility registration surcharge imposed by section 260.935 and the drycleaning solvent surcharge imposed by section 260.940 will terminate or be payable on the following July first.

**3.** Moneys in the fund shall not be expended pursuant to sections 260.900 to 260.960 prior to July 1, 2002.

**260.950. 1.** All final orders and determinations of the commission or the department made pursuant to the provisions of sections 260.900 to 260.960 are subject to judicial review pursuant to the provisions of chapter 536, RSMo. All final orders and determinations shall be deemed administrative decisions as that term is defined in chapter 536, RSMo; provided that, no judicial review shall be available, unless all administrative remedies are exhausted.

**2.** In any suit filed pursuant to section 536.050, RSMo, concerning the validity of the commission's or department's standards, rules or regulations, the court shall review the record made before the commission or department to determine the validity and such reasonableness of such standards, rules or regulations and may hear such additional evidence as it deems necessary.

**260.955.** The department shall annually transmit a report to the general assembly and the governor regarding:

**(1)** Receipts of the fund during the preceding calendar year and the sources of the receipts;

**(2)** Disbursements from the fund during the preceding calendar year and the purposes of the disbursements;

**(3)** The extent of corrective action taken pursuant to sections 260.900 to 260.960 during the preceding calendar year; and

**(4) The prioritization of sites for expenditures from the fund.**

**260.960. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.**

640.010. 1. There is hereby created a department of natural resources in charge of a director appointed by the governor, by and with the advice and consent of the senate. The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. He shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and his decisions shall be subject to appeal to the board or commission on request of the board or commission [or by affected parties]. The director shall recommend policies to the various boards and commissions assigned to the department to achieve effective and coordinated environmental control and natural resource conservation policies.

2. The director shall appoint directors of staff to service each of the policy making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which he is assigned and his appointment shall be approved by the board to which he is assigned and he shall be removed or reassigned on their request in writing to the director of the department. All other employees of the department and of each board and commission assigned to the department shall be appointed by the director of the department in accord with chapter 36, RSMo, and shall be assigned and may be reassigned as required by the director of the department in such a manner as to provide optimum service, efficiency and economy.

3. The air conservation commission, chapter 203, RSMo, and others, the clean water commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department of natural resources. The governor shall appoint the members of these bodies in accord with the laws establishing them, with the advice and consent of the senate. The bodies hereby transferred shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies transferred to their jurisdiction. All the powers, duties and functions of the state environmental improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the air conservation commission. All the powers, duties and functions of the water resources board,

chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission and the board is abolished. No member of the clean water commission shall receive or shall have received, during the previous two years from the date of his appointment, a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of the clean water commission. The state park board, chapter 253, RSMo, is transferred to the department of natural resources by type I transfer.

4. All the powers, duties and functions of the state soil and water districts commission, chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and others, are transferred by type I transfer to the department of natural resources. All the powers, duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the department of natural resources by type I transfer and the authority is abolished. All the powers, duties and functions of the state oil and gas council, chapter 259, RSMo, and others are transferred to the department of natural resources by type II transfer. The director of the department shall appoint a state geologist who shall have the duties to supervise and coordinate the work formerly done by the departments or authorities abolished by this subsection, and shall provide staff services for the state oil and gas council.

6. All the powers, duties and functions of the land reclamation commission, chapter 444, RSMo, and others, are transferred to the department of natural resources by type II transfer. All necessary personnel required by the commission shall be selected, employed and discharged by the commission. The director of the department shall not have the authority to abolish positions.

7. The functions performed by the division of health in relation to the maintenance of a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for licensing and regulating solid waste management systems and plans are transferred by type I transfer to the department of natural resources.

8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is transferred to the department of natural resources by type II transfer. The council shall consist of representatives of the following state agencies: department of agriculture; department of conservation; office of administration; department of natural resources; department of economic development; department of social services; department of transportation; and the University of Missouri.

(2) The council shall function as provided in chapter 258, RSMo, except that the department of natural resources shall provide all staff services as required by the council notwithstanding the provisions of [sections] **section** 258.030 [and 258.040], RSMo, and all personnel and property of the council are hereby transferred by type I transfer to the department of natural resources and the office of executive secretary to the council is abolished.

**640.020. 1. Other provisions of law notwithstanding, the department of natural**

**resources, including any board or commission assigned to the department of natural resources in accordance with section 640.010 that is authorized by statute to adopt rules, shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the provisions of any applicable federal statutes and federal regulations, as follows:**

**(1) The clean air commission shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Air Act, as amended, relating to air pollution control;**

**(2) The clean water commission shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Clean Water Act, as amended, relating to water pollution control, and subtitle I of the federal Resource Conservation and Recovery Act, as amended, relating to underground storage tanks;**

**(3) The hazardous waste management commission shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Resource Conservation and Recovery Act, as amended, relating to hazardous waste management;**

**(4) The land reclamation commission shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Surface Mining Control and Reclamation Act, as amended, relating to surface mining and land reclamation;**

**(5) The safe drinking water commission shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of the federal Safe Drinking Water Act, as amended, relating to drinking water systems;**

**(6) The department shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the state of Missouri is in compliance with the substantive provisions of subtitle D of the federal Resource Conservation and Recovery Act, as amended, relating to solid waste management.**

**2. The rules promulgated by the department or any commission or board**

assigned to the department shall not be any stricter than those required pursuant to the provision of the applicable federal statutes and federal regulations nor shall such rules be enforced in any area of the state of Missouri prior to the time required by the federal statutes or regulations, unless the department, commission or board makes specific findings, based on competent and substantial evidence in the administrative record, that:

(1) Specific circumstances or conditions in the state of Missouri are causing, or have the potential to cause, specific harm to human health and the environment; and

(2) Either:

(a) The specific circumstances or conditions are not subject to regulation by any applicable federal statute or federal regulation; or

(b) The existing federal statutes or regulations are not sufficient to adequately protect human health and the environment in the state of Missouri; and

(3) A more restrictive rule is necessary to address the specific circumstance or condition in order to prevent or alleviate the specific harm caused to human health and the environment.

3. For any rule promulgated pursuant to subsection 2 of this section, the department, commission or board shall specifically enumerate in the administrative record and shall publish in the Missouri Register, along with the notice of proposed rulemaking, findings of fact relative to the specific circumstances or conditions causing harm, the nature and scope of the specific harm to human health and the environment, and the health-based and/or science-based reasons justifying why the adoption of a more restrictive rule will prevent or alleviate the specific harm to human health and the environment.

4. For any rule promulgated pursuant to subsection 2 of this section, the fiscal notes required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the requirements imposed those sections, a discussion and explanation of the consideration by the department, commission or board of the effects on human health and the environment, economics, pollution prevention and the effectiveness and cost of reasonably available control methods for the proposed more restrictive rule.

5. Any rule that is more restrictive than federal statutes or federal regulations that is adopted by the department or a commission or board assigned to the department without complying with the procedures set forth in this section is void.

Section 1. 1. Notwithstanding any other provision of law, when the department of natural resources intends to enter into any contract or other written agreement or approve any letter of intent for payment of money by the state in excess of one hundred thousand dollars or potential reduction of a party's financial obligation to the state in

**excess of one hundred thousand dollars shall forward a copy to the attorney general before entering into that contract or other written agreement or approving that letter of intent.**

**2. Upon receiving the contract, written agreement or letter of intent, the attorney general shall, within ten days, review and approve that contract for its legal form as may be necessary to protect the legal interest of the state. If the attorney general does not approve, then the attorney general shall return the contract, written agreement or letter of intent with additional provisions as may be necessary to the proper enforcement of the contract as required to protect the state's legal interest.**

**3. The review shall be restricted to the legal form of the contract, written agreement or letter of intent to protect the legal interest of the state of Missouri. The basis for not approving the contract, written agreement or letter of intent shall not include the parties or economic terms to such agreements.**

**4. Communications related to the attorney general's review are attorney-client communications except the attorney general's written disposition shall be subject to chapter 610, RSMo, when and if the contract, written agreement or letter of intent becomes effective.**

Section B. The provisions of sections 260.900 to 260.960 shall expire August 28, 2007.